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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 15 2011

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained, and the petition will be approved.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a minister at the Eglise du Christ de Flatlands, Brooklyn, New York. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, counsel maintains that the petitioner has already submitted sufficient evidence to establish eligibility.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious

denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on May 29, 2001. Therefore, the petitioner must establish that he was continuously working as a minister throughout the two-year period immediately preceding that date.

Church officials state in letters that the beneficiary has been the church's minister since 1987. The petitioner has submitted copies of contemporaneous documentation supporting those claims. The church, indeed, had filed a petition on the petitioner's behalf in April 1994, which was denied on grounds that have since been overcome. A second petition was denied in 2000 on the same grounds as the present petition. An appeal of that denial was rejected on technical grounds unrelated to the merits of the appeal. Given these earlier petitions, it is beyond dispute that the petitioner has been somehow connected to the church for over two years prior to May 2001.

To establish that this connection has taken the form of employment, the petitioner has submitted copies of salary checks issued to the petitioner as early as 1994, and tax documentation from 2001 reflects $36,400 in salaries paid, which matches exactly the church's claim of weekly payments of $700 to the petitioner. The petitioner has also submitted certificates showing that the petitioner has performed marriage ceremonies on behalf of the church, which indicates that the petitioner is authorized to perform all the functions of the clergy; he is not merely a lay preacher.

The petitioner has also submitted, as requested, an hourly breakdown of his usual weekly schedule, reflecting 37¾ hours of work per week, which conforms to general guidelines regarding full time employment. The director's decision contains no indication that this schedule is questionable or unacceptable.

The director, in denying the petition, noted the absence of Form W-2 Wage and Tax Statements issued to the petitioner by the church. While the petitioner has not submitted Forms W-2 on appeal, the regulations do not require that evidence of employment must include Forms W-2. The petitioner has submitted no evidence of legal nonimmigrant status, which could explain the absence of such tax documentation. Any inadmissibility issues arising from the beneficiary's lack of status are more

germane to an adjustment application or visa application than to this immigrant visa petition. Approval of a visa petition vests no rights in the beneficiary of the petition but is only a preliminary step in the visa or adjustment of status application process, and the beneficiary is not, by mere approval of the petition, entitled to an immigrant visa or to adjustment of status. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The proceeding at hand is concerned not with the petitioner's admissibility, but rather with his eligibility for a particular immigrant classification. The evidence submitted by the petitioner, along with older evidence that has been incorporated into the file containing the record of proceeding, establishes an overall pattern that is consistent with the petitioner's claim of employment as the minister and pastor of the Eglise du Christ de Flatlands.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.